

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 2-7, 11 and 12 are requested to be cancelled.

Claims 1, 10 and 13 are currently being amended.

Claims 14-16 are being added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1, 10 and 13-16 are now pending in this application.

Rejections under 35 U.S.C. § 101

The Examiner has again rejected claim 13 as being directed towards non-statutory subject matter. The Examiner has repeated the earlier rejection and argues that “the claim limitations are nothing more than instructions for computer code.” Office Action dated March 22, 2008, page 2. Applicant respectfully traverses this rejection for at least the following reasons.

Applicant maintains the arguments presented in Applicant’s reply filed on December 19, 2007. “[W]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.” *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). See M.P.E.P. § 2106.01. Applicant directs the Examiner’s attention to the explicit preamble of the claimed invention which provides a “computer program product,

embodied on a computer-readable medium.” Thus, claim 13 functional descriptive material and, therefore, constitutes statutory subject matter.

The present Office Action does not address or respond to Applicant’s arguments. Applicant again asserts that, for at least the above-noted reasons, claim 13 is directed to statutory subject matter. Further, new claim 16 is directed to statutory subject matter for similar reasons. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

#### Rejections under 35 U.S.C. § 112

Claim 13 was rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Examiner argues that “a computer program product” and “computer code” were not described in the specification sufficiently. Applicant respectfully traverses this rejection for at least the following reasons.

As noted in an earlier reply by Applicant, certain embodiments of the invention relate to the operation of devices such as controllers. In most cases, such operation methods are implemented as computer code installed on, for example, a memory device of the controller. In this regard, one of ordinary skill in the art would readily understand that certain methods related to the invention may be implemented as computer code in a computer program product which would be embodied on a computer-readable medium.

Further, Applicant notes that it was well known in the art at the time of the filing of the present invention that such operations are readily implemented in computer program products.

The present Office Action does not address or respond to Applicant’s arguments presented in an earlier reply. Applicant again asserts that, for at least the above-noted reasons the rejection under 35 U.S.C. § 112, first paragraph, should be withdrawn.

#### Rejections under 35 U.S.C. § 103

Claims 1, 2, 7 and 11 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 7,107,066 to Toth *et al.* (hereinafter “Toth”) in view of

3GPP TS 25-346, V1.10 (2002-5) (hereinafter “Reference A”). Claims 3, 10, 12 and 13 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Toth in view of Reference A and further in view of 3GPP TS 23-346, V1.1.0 (2002-9)) (hereinafter “Reference B”). As to canceled claims 2, 3, 7, 11 and 12, the rejections are moot. As to claims 1, 10 and 13, Applicant has amended these claims to more clearly recite the various features of the claimed invention. Applicant respectfully traverses the rejections, as applied to the amended claims and to newly added claims 14-16, for at least the following reasons.

In accordance with embodiments of the present invention, a controlling device of a radio access network, such as the CRNC, receives a user equipment active list from a serving device, such as an SRNC. As noted in an earlier reply, the list includes user equipment joining a multicast/broadcast service within a cell controlled by another controller. The CRNC selects a channel type for connection of the service to user equipments and sends the information about the selected channel type to the SRNC, for example. Thus, in accordance with embodiments of the present invention, the CRNC selects a channel when activating a multicast/broadcast service. Accordingly, independent claim 14 recites “selecting a channel type by the controlling device ... for the connection of the multicast/broadcast service to one or more user equipments.” Independent claims 15 and 16 each recite a similar feature. Further, independent claims 1, 10 and 13 recite a similar feature from another perspective. Specifically, amended claim 1 recites “receiving a channel type configuration from the radio access network controller for the connection of the multicast/broadcast service to one or more user equipment ....” Claims 10 and 13 each recite a similar feature.

The cited references fail to teach or suggest at least this feature of the pending claims. As noted in an earlier reply by Applicant, Applicants recognized the issues presented by Reference A and provide an advantageous solution. See Specification, page 3, paragraphs [0007]-[0008]. For example, Reference A discloses that “the details of when the signaling flow is initiated are to be defined in SA2,” and “NOTE: The signaling flow for linking a UE to the established MBMS service context is not yet included.” Ref. A, § 7.1.1, line 3 and line 9 (emphasis added). Thus, Reference A neither teaches, suggests nor even contemplates a solution to the issues presented.

The solutions proposed by the embodiments of the present invention are neither taught nor suggested by Reference A. Specifically, Reference A fails to teach or suggest at least the selecting of a channel type by the controlling device when activating a multicast/broadcast service. Rather, Reference A merely relates to channel switching and fails to teach or suggest selecting of a channel. See e.g., Reference A, §§ 7.1.2 and 7.1.3.

Further, Applicant notes that, at the time of filing of Toth, Reference A was publicly available. Even in light of Reference A, Toth fails to address the above-noted issues.

By contrast, embodiments of the present invention provide signaling not disclosed in any cited reference. For example, Figures 1 and 2 illustrate signaling in accordance with embodiments of the present invention. Such signaling benefits from the separation of the CRNC and the SRNC, as illustrated in Figures 1 and 2.

Neither Toth nor Reference A teaches or suggests such signaling. As noted above, Reference A admits that any such signaling was not concluded at the time of publication of Reference A. As to Toth, Applicant directs the Examiner's attention to Figure 3 of Toth, which illustrates the signaling in accordance with the disclosure of Toth. Toth clearly does not separate the CRNC and the SRNC in its signaling and fails to teach or suggest the signaling as recited in the pending claims.

Thus, the cited references, either alone or in combination, fail to teach or suggest at least the above-noted features of the pending claims. Accordingly, claims 1, 10 and 13-16 are patentable.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the

credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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